

**Appellate Practice Section Council
February 15, 2008
Farmington Hills, Michigan—Secrest Wardle**

MEETING MINUTES

Present:

Paul Bernard
Barbara Goldman
Megan Cavanagh [by Phone]
Liisa Speaker

Frank Bernacki
Graham Crabtree
Judith Curtis [by Phone]
Cara Edwards
Linda Garbarino
Christina Ginter
Deb Hebert
Marcia Howe [by Phone]
Ron Lederman
Anica Letica [by Phone]
Mary Massaron Ross [by Phone]
Stephen Rhodes [by Phone]
Roz Rochkind [by Phone]
Mike Updike
Peter Van Hoek

Excused Absences:

Marc Cooney
Phil DeRosier
Gerry Posner
Jill Wheaton

Guests:

Vic Valenti
Stephanie Morita

Welcome and Call to Order

- A. Paul Bernard called the meeting to order at 2:08 p.m.
 - B. Introduction of members and guests.
- I. Approval of Minutes
- A. January 18, 2008 (previously circulated). Mike Updike **moved** and Frank Bernacki **seconded** that the minutes of the January 18, 2008 be approved.
- II. Treasurer's Report.
- A. Megan Cavanagh received financials and they appear to be good.

III. Committee Reports

A. Court Liaison/Rules Comment

1. Council discussed the opening of administrative file in relation to *Beavers* case and tolling of delayed application for leave to appeal. Vic Valenti will contact Anne Boomer (boomera@courts.mi.gov) Supreme Court counsel, regarding how they want APS Council to proceed.

B. Michigan Court Practice.

1. Megan Cavanagh is making the suggested changes to the report on the fast track.

C. Publications.

1. Newsletter. Christina Ginter has submitted the newsletter and it should be mailed next week. The next deadline for article submissions is April 1, 2008. Continued last month's discussion about column ideas. Upcoming deadlines are July 14, 2008 and October 20, 2008. Deb Hebert will post deadlines for the next two years on council listserv so that all council members can decide which issue they are committing to generate an article.

D. Technology.

1. Listserv. Barb Goldman reported that she contacted Brandon Chard about recreating the listserv. She has a target date of March 17, 2008 (that listserv members have to be a Section member or they will be removed from the listserv). Barb Goldman will remind all about the listserv rules.

E. Federal Practice

1. Mary Massaron Ross reported on possible plans for a Sixth Circuit program. She would like an afternoon meeting on day of a APS Council meeting. She proposes having some Sixth Circuit clerks and judges speak to the Section. Council discussed holding the seminar in October 2008, November 2008, or January 2009. Mary will decide based on speaker availability.

F. Legislative Action.

1. Graham Crabtree reported that there has not been any movement on

the package of bills proposing loser pays system, punitive damage sanctions for frivolous claims and defenses, and jury procedure.

G. Good Deeds

1. No report.

H. Economics of Appellate Practice

1. Mike Updike reported on common problem faced by appellate practitioners (video or deposition not transcribed into the trial record). Stephanie Morita has drafted proposed court rule (Memorandum from Stephanie attached as addendum to agenda packet) change that would mandate the transcribing the deposition into the record. Mike would like Council to propose a court rule change. Peter Van Hoek would like rule also to reflect other video tapes (such as videotape interrogations, 9-1-1 audio tapes). Peter also recommended adding to the rule a requirement to transcribe bench conferences. Roz Rochkind suggested that, if the rule were to give the trial counsel the ability to waive the requirements of transcribing the deposition, it can only be done if there are no redactions. Vic Valenti proposed making Stephanie a member of the Rules Comment Committee.

IV. Old Business

- A. Law Student Section Moot Court. Paul Bernard reported that he spoke with the law student contact person and he wanted the Section to sponsor an award or otherwise fund the program. Deb Hebert recommended that if they wanted to make a specific proposal, they do so and send a representative to a Council meeting.
- B. Proposed Legislation Regarding Juries. (Already discussed)
- C. Newsletter Proposals. (Already discussed)

V. New Business

- A. ADM 2006-11 (Proposed amendment of stay rules in governmental immunity appeals) [pp 8-12 of attachment to Agenda]. Response due to State Bar by March 28, 2008; Supreme Court by May 1, 2008. Council discussed conflict in MCR 2.615 and MCR 7.209, the ambiguity as to whether the stay is only as to the governmental entity, whether there should be an exception for exceptional circumstances, and whether the governmental appeals by right from a denial of a motion for summary

disposition be given expedited consideration. There appeared to be consensus that the proposed rule language is ambiguous and would create problems for attorneys. Barb Goldman proposed that we inform the State Bar/Supreme Court that Council had disagreement on the substance of the rule proposal. She also proposed that we submit comments for ADM 2006-09 (proposed amendment to MCR 7.202 final judgment rule making governmental immunity decisions final orders) (attached as amendment to Agenda).

- B. House Joint Resolution KK (Constitutional amendment for elimination of incumbency designation on judicial ballots) [pp 13-14 of attachments to Agenda]. Response due to State Bar by March 28, 2008. No action taken.
- C. ADM 2006-32 (Proposed amendment of default judgment rule) [pp 15-16 of attachments to Agenda]. Response due to State Bar by March 28, 2008. No action taken.
- D. ADM 2004-08. (Proposed revision to pro hac vice rules) [pp 17-30 of attachments to Agenda]. Response due by March 14, 2008. No action taken.

VI. Next Meeting

- A. March 14, 2008, 2:00 p.m. (Farmington Hills at Secrest Wardle).

Call-in Number: 800-270-1153; pass code: 124048#.

VII. Adjournment

- A. Meeting adjourned by unanimous vote at 3:57 p.m. Mike Updike **moved** and Frank Bernacki **seconded**. Motion carried.